



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ-OLEM-2021-0946; FRL-9334.1-01-OLEM]

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards developing organization. Specifically, this final rule amends the All Appropriate Inquiries Rule (AAI rule) to reference ASTM International's E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act, and to remove after one year recognition of the previous version of that standard, ASTM E1527-13, as compliant with the AAI rule.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-0002, 202-566-2774, or Overmeyer.patricia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

- I. Does this Action Apply to Me?
- II. Statutory Authority

III. Background
IV. Summary of Comments
V. What Action is the EPA Taking?
VI. Statutory and Executive Order Reviews

I. Does this Action Apply to Me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527-21 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This rule does not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527-13 "Standard Practice for Phase I Environmental Site Assessments" for up to one year after this rule becomes effective, use the ASTM E2247-16 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property," or use the standard recognized in this final rule, the ASTM E1527-21 standard, to comply with the all appropriate inquiries provision of CERCLA.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with funding from a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by this action. This includes State, local, and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry Category	NAICS Code
Real Estate	531
Insurance	52412
Banking / Real Estate Credit	522292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

II. Statutory Authority

This rule amends the All Appropriate Inquiries Rule setting Federal standards for the conduct of “all appropriate inquiries” at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

III. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (“the Brownfields Amendments”). In general, the Brownfields Amendments to CERCLA provide funds to assess and clean up brownfield sites; clarify existing and establish new CERCLA liability provisions related to certain types of owners of contaminated properties; and provide funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section

101(35) and limited liability under Section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA Sections 107 and 101(35). The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake “all appropriate inquiries” into prior ownership and use of property before purchasing the property to qualify for protection from CERCLA liability.

The Brownfields Amendments of 2002 required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the rule, the ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” In December 2008, EPA amended the All Appropriate Inquiries Rule to recognize another ASTM standard as compliant with the rule, ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” Both standards, the ASTM E1527-05 and the ASTM E2247-08, were subsequently revised by ASTM International. EPA referenced the revised ASTM E1527-13 standard on August 15, 2013 (78 FR 49690), and referenced the revised ASTM E2247-16 Standard on September 15, 2017 (82 FR 43310), as compliant with the All Appropriate Inquiries Rule. Currently, the All Appropriate Inquiries Rule (40 CFR part 312) allows for the use of the ASTM E1527-13 standard or the ASTM E2247-16 standard to conduct all appropriate inquiries, in lieu of following the requirements included in the rule. Once this action is final, the All Appropriate Inquiries Rule will allow for the use of the ASTM E1527-21 standard and will phase out use of the ASTM E1527-13 standard.

Recently, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” was

reviewed by EPA, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Rule.

On March 14, 2022, EPA published a direct final rule (87 FR 14174) to amend the All Appropriate Inquiries Rule to reference ASTM E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” and allow for its use to satisfy the requirements of the All Appropriate Inquiries Rule. A companion proposed rule, also published on March 14, 2022, invited comment on the direct final rule and stated that if EPA received adverse comment on the proposal to reference the ASTM E1527-21 standard, the Agency would withdraw the direct final rule. EPA received adverse comments on that action and published a notification of withdrawal of the direct final rule on May 2, 2022 (87 FR 25572). In this document, EPA is finalizing the amendment to the All Appropriate Inquiries Rule referencing the ASTM E1527-21 standard practice and addressing the comments received in response to the March 14, 2022 proposed rule.

IV. Summary of Comments

EPA received thirteen comments on the proposed rule published March 14, 2022. EPA developed a Response to Comments document and placed it in the docket for this action. The comments and EPA’s responses are summarized here. Most commenters supported the Agency’s proposed action to amend the All Appropriate Inquiries Rule to add a reference to ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act. Several commenters raised concerns related to the Agency’s decision to continue to recognize a previous ASTM standard, ASTM E1527-13, as compliant with the All Appropriate Inquiries Rule. Commenters pointed out that the previous version of the ASTM standard, ASTM E1527-13, will sunset and will no longer be available from ASTM

International. Commenters pointed out that the revised standard, ASTM E1527-21, was developed with input from industry professionals, users, and regulators and its updated provisions offer positive benefits to stakeholders. In addition, commenters asserted that the updated standard now represents “good commercial and customary business practice,” and therefore should replace the current ASTM E1527-13 Phase I Environmental Site Assessment standard referenced by EPA, rather than merely being added as an additionally referenced standard. Other commenters stated that EPA’s continued acceptance of the 2013 version of the ASTM E1527 standard will create confusion within the marketplace because users will need to unnecessarily compare the costs and benefits of the use of the two standards when receiving multiple bids from potential contractors before environmental site assessment. EPA recognizes the commenters’ concerns.

In response to concerns raised by commenters regarding the potential confusion associated with the Agency’s recognition of a historical standard no longer recognized by ASTM International as current, or no longer reflecting its current consensus-based, or customary business standard, the Agency will remove its reference to the ASTM E1527-13 Standard Practice for Environmental Site Assessments. To provide parties with an adequate opportunity to complete AAI investigations that may be on-going and to allow all parties sufficient notice to become familiar with the updated industry standard (ASTM E1527-21), the Agency is providing for a sunset period for the removal of its recognition of the historic standard (ASTM E1527-13) as compliant with all appropriate inquiries. The sunset period for removal of the reference to the ASTM E1527-13 Standard Practice for Environmental Site Assessments is one year from publication of this final rule. A Phase 1 Environmental Site Assessment completed before that date using ASTM E1527-13 will be recognized as compliant with the All Appropriate Inquiries Rule.

One commenter requested that EPA provide a formal notice and comment opportunity on the ASTM E1527-21 Phase I Environmental Site Assessment Process. The commenter also stated

that the reference to “emerging contaminants” in the ASTM E1527-21 standard is an “out of scope” consideration that may lead to additional potential CERCLA liability prematurely for landowners and potential buyers. In the March 14 direct final rule and the accompanying proposed rule, EPA clearly stated that it was not requesting comment on the ASTM standard. The ASTM standard is not an EPA regulation, and its use is not required to comply with the All Appropriate Inquiries Rule or any other EPA regulations.

Industry standards may include elements that are not within the scope of the All Appropriate Inquiries Rule. Use of the ASTM E1527-21 standard is not required for compliance with the All Appropriate Inquiries Rule. Therefore, EPA does not consider these additional elements as a reason to avoid recognition of the revised E1527-21 standard as compliant with the All Appropriate Inquiries Rule.

Two commenters submitted requests for modifications to the ASTM E1527-21 standard. One commenter requested changes to the standard’s requirements for environmental lien searches and to the definitions of “recognized environmental conditions.” Another commenter requested a modification to the definition of “property use limitation” as it is used in the ASTM E1527-21 standard. The ASTM E1527-21 is not an EPA standard and the Agency stated in the proposed rule that it was not requesting comments on the ASTM standard. Requests to modify the ASTM standard should be directed to ASTM. Use of the ASTM standard is not required to comply with the All Appropriate Inquiries Rule.

V. What Action is the EPA Taking?

This rule amends the All Appropriate Inquiries Rule to allow for the use of the recently revised ASTM International standard ASTM E1527-21 to satisfy the all appropriate inquiries requirements under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With this action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

The Agency notes that this action does not require any party to use the ASTM E1527-21 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections, or a brownfields site assessment under CERCLA Section 104(k), may follow the provisions of the All Appropriate Inquiries Rule at 40 CFR part 312. This action merely allows for the option of using ASTM International's E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" by those parties purchasing potentially contaminated properties in lieu of following the specific requirements of the All Appropriate Inquiries Rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the ASTM E1527-21 standard. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Rule and the revised ASTM E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," as well as the applicability of the E1527-21 standard to certain types of properties, EPA developed, and placed in the docket for this action, the document "Comparison of All Appropriate Inquiries Regulation, the ASTM E1527-13 Phase I Environmental Site Assessment Process, and ASTM E1527-21 Phase I Environmental Site Assessment Process." The document also provides a comparison of the two ASTM E1527 standards.

This action also includes the removal of the current reference in the All Appropriate Inquiries Rule to the ASTM E1527-13 Standard Practice for Environmental Site Assessments as compliant with all appropriate inquiries. The removal of the reference to the historic standard as

compliant with the all appropriate inquiries requirements will take effect one year following publication of this final rule.

This action includes no changes to the All Appropriate Inquiries Rule other than to add a reference to the new ASTM E1527-21 standard and remove the current reference to the historic ASTM E1527-13 standard as compliant with all appropriate inquiries. With this final rule, EPA is recognizing the ASTM E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” as compliant with the all appropriate inquiries requirements. The reference to the ASTM E1527-13 standard as compliant with the all appropriate inquiries requirements will be removed from the reference section of the AAI (40 CFR 312.11) one year following publication of this final rule.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant

federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action is exempt from review under Executive Order 12866, this rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113; 15 U.S.C. 272) (NTTAA) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary consensus standards and decrease dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulations; b) provide incentives and opportunities to establish standards that serve national needs; c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), whenever possible in lieu of creating proprietary, non-consensus standards.

This action is compliant with the spirit and requirements of the NTTAA. This action allows for the use of the ASTM International standard known as Standard E1527-21 and entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” By taking this action, EPA is fulfilling the intent and requirements of NTTAA.

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Barry N. Breen,
Acting Assistant Administrator,
Office of Land and Emergency Management.

For the reasons set out in the preamble, 40 CFR part 312 is amended as follows:

**PART 312 – INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL
APPROPRIATE INQUIRIES**

1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart B—Definitions and References

2. Section 312.11 is amended by:

- a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;
- b. Adding a new paragraph (a); and
- c. Revising newly redesignated paragraph (c).

The addition and revision read as follows:

§ 312.11 References.

* * * * *

(a) The procedures of ASTM International Standard E1527-21 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” This standard is available from ASTM International at www.astm.org, 1-610-832-9585.

* * * * *

(c) Until **[INSERT DATE 425 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER]**, the procedures of ASTM International Standard E1527-13 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” This standard is available from ASTM International at www.astm.org, 1-610-832-9585.